IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

RSA.No. 396 of 2007()

AS.118/2002 of SUB COURT, KASARAGOD
OS.136/2000 of ADDL.MUNSIFF, KASARAGOD

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: APPELLANTS/PLAINTIFFS:

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1. MAMMU, S/O.LATE SEEDIKUNHI,
NADUBALAPIL HOUSE, KUDALA, KANNUR VILLAGE,
KASARGODE.

2. AISAMMA, D/O.LATE SEEDIKUNHI,
NADUBALAPIL HOUSE, KUDALA, KANNUR VILLAGE,
KASARGODE.

3. MARIYAMMA, D/O.LATE SEEDIKUNHI,
NADUBALAPIL HOUSE, KUDALA, KANNUR VILLAGE,
KASARGODE.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS: RESPONDENTS/DEFENDANTS:

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1. MOHAMMAD @ S.A.AMOO HAJI,
CHUDUBAILU, KANNUR, KASARGODE.

2. KHADEEJAMMA, W/O.LATE ABDULLA,
MAIPPAY, SIRIBAGILU VILLAGE, KASARGODE.

3. ISMAIL, S/O.LATE ABDULLA,
CHUDUBAILU, KANNUR, KASARGODE.

4. ABBAS, S/O.LATE ABDULLA,
CHUDUBAILU, KANNUR, KASARGODE.

5. ABDULRAHIMAN, S/O.LATE ABDULLA,
CHUDUBAILU, KANNUR, KASARGODE.

6. AISHA, W/O.MOHAMMED, MAIPPADY,
SIRIBAGILU VILLAGE, KASARGODE.

7. NABEEZA, W/O.ABDULLA,
ANNADKKA, BADIADKA, P.O.PALLATHADKA,
KASARGODE.

8. MUSTAFA, S/O.LATE ABDULLA,
MAIPPAY, SIRIBAGILU VILLAGE,
KASARGODE.

9. SHAFI, S/O.LATE ABDULLA, MAIPPAY,
SIRIBAGILU VILLAGE, KASARGODE.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 396 OF 2007

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DATED THIS THE 16th DAY OF JULY, 2007

JUDGMENT

Plaintiffs in O.S.136 of 2000 on the file of Munsiff Court, Kasargod are the appellants. Defendants are respondents. Appellants instituted the suit seeking a decree for recovery of possession of the plaint schedule property contending that they have title to the property under Ext.A1 patta whereunder title was assigned by the Government in their favour and respondents have no manner of right over the same and therefore they are entitled to recover possession of the same on the strength of title. Respondents in their written statement contended that they got assigned the property in their possession under Ext.B1 and the disputed portion of the property forms part of the property which was enclosed in a compound wall constructed in 1980 and they have title to the property and even if appellants have title to the property it is barred by adverse possession and limitation.

2. Learned Munsiff on the evidence of PW1 and Dws 1 and 2 and Exts.A1 to A4, Exts.B1 & B2 and Exts.C1 and C2, dismissed the suit holding that though the disputed property

forms part of the property assigned to the appellants under Ext.A1, their title has been lost by adverse possession and respondents have established that they have perfected their title by adverse possession. The suit was dismissed. Appellants challenged the decree and judgment before Sub Court, Kasargod in A.S. 118 of 2002. Learned Sub Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard. Learned counsel, relying on the written statement filed by respondents where they admitted that they did not claim any right over the property in Survey No.162/4 and 161/2 of Kannur Village, argued that as seen from Ext.C2 plan submitted by the Commissioner, the disputed portion of the property falls in Survey No.162/4 and as per the written statement respondents did not claim any right to that property and as courts below found that appellants have title to that property under Ext.A1 a decree for recovery of possession should have been granted. It was argued that a plea of adverse possession is not sustainable when respondents did not recognise the right of appellants. It was also argued that when in the written statement it was

contended that they have been in possession of the property from 1980, what was deposed by DW1 was that they have been in possession of the property from 1967 onwards and this inconsistent case should not have been accepted by the courts below. Relying on the decision of Apex Court in **Karnataka Board of Wakf V. Government of India and others** (2004 SAR Civil 535) learned counsel argued that without establishing from which date onwards respondents have been in possession of the property and that too adverse to the true owner, they are not entitled to claim a title perfected by adverse possession and findings of the courts below are unsustainable.

4. On hearing learned counsel appearing for appellants and going through the judgments of the courts below and in the light of the factual finding of the courts below, I do not find any substantial question of law involved in the appeal. True, in order to succeed the plea of adverse possession, as declared by the Apex Court in **Karnataka Board of Wakf's case (**supra) defendants have to prove when their possession started adverse to the true owner. The plea of adverse possession is not a pure question of law but a blended one of fact and law. A person pleading adverse possession has no equities in his favour and

has to establish that he has been in possession of the property for the requisite period with the animus possidanti adverse to the owner and that too open and exclusive possession, hostile to the true owner.

5. Though learned counsel appearing for appellants argued that as respondents did not claim any right or title to the property in Survey No.162/4 and the disputed property is in Survey No.162/4, the plea of adverse possession is not sustainable. The written statement has to be read as above. The contention raised in the written statement is that the property assigned in favour of the defendants, which lies to the east and the property belonging to the appellants which lies to the west were all government lands and were assigned in favour of appellants and respondents in 1980 respectively. The specific contention in the written statement was that plaint B schedule property which is the disputed portion, has been in their possession and enclosed by a compound wall constructed in 1980 and they have effected improvements and planted cashewnut and coconut plants and they have been in possession of the property asserting hostile title to the knowledge of the plaintiffs openly, uninterruptedly and peacefully and thereby

they have perfected the title. Therefore what was contended by defendants was that they have been in uninterrupted and peaceful possession of the plroperty which lies to the east of the compound wall from 1980 onwards and it is to the knowledge of the appellants and that too asserting hostile title to their knowledge and thereby they have perfected their title. Ext.C1 report and C2 plan show that there is a compound wall separating the disputed property which is marked as 162/4A and the remaining property which admittedly is in the possession of the appellants, marked 162/4 and separating the two plots there is an old mud bund. The report also shows that the property to the east of the said old mud bund was being enjoyed along with the remaining property which lies to the east of the disputed plot. Therefore a reading of the written statement would establish that, what was claimed by respondents was that they have been in possession of the disputed property from 1980 onwards openly and peacefully and to the knowledge of the appellants and that too adverse to the appellants and thereby they have perfected their title by adverse possession.

6. The trial court as well as first appellate court on appreciation of evidence found that respondents have been in

possession of the disputed plot for more than the requisite period and it was with the required animus and asserting the hostile title. In such circumstances, that factual finding cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

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